



U.S. DEPARTMENT OF EDUCATION

THE WANAMAKER BUILDING
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PHILADELPHIA, PA 19107

OFFICE OF
INSPECTOR GENERAL

DEC 7 2001

ED-OIG/A03-B0014

Mr. Carl Spatocco
Executive Director
All-State Career School
501 Seminole Street
Lester, PA 19029

Dear Mr. Spatocco:

This *Final Audit Report* (Control Number ED-OIG/A03-B0014) presents the results of our audit of the Ability-to-Benefit (ATB) testing process of All-State Career School (All-State).

A draft of this report was provided to All-State. In its response, All-State indicated that it did not concur with the audit finding and recommendations. Specifically, All-State stated the findings in the draft report were without merit. We summarized All-State's response in this report's "Audit Results" section, under "All-State's Reply." A copy of All-State's response, without its attachments, is provided as an attachment to this report.

BACKGROUND

All-State provides Class A and B Commercial Driver's License Driver Training programs and an Advanced Tractor Trailer Driver's Training program at locations in Lester, PA, and Baltimore, MD. The Accrediting Commission of Career Schools and Colleges of Technology accredits the school. Admissions requirements for all programs generally require that students possess a high school diploma or its equivalent. Applicants who do not have a high school diploma or its equivalent may also be admitted provided they can demonstrate they have the ability to benefit from the education or training offered by successfully passing the Wonderlic Basic Skills Test (WBST). The WBST is a short form measure of adult language and math skills, which are generally learned in high school. The WBST is approved by the Department of Education (ED) for use in qualifying non-high school graduates to receive Federal financial assistance for postsecondary training under Title IV of the Higher Education Act of 1965, as amended (HEA).

From July 1, 1997, through June 30, 2000, All-State disbursed approximately \$55,000 in Federal Supplemental Educational Opportunity Grants, \$1.5 million in Federal Pell Grants, and \$7.9 million in Federal Family Education Loans.

AUDIT RESULTS

Our audit disclosed that All-State generally administered the ATB testing process in accordance with test publisher procedures, the HEA, and implementing regulations. However, we did identify a weakness in the ATB testing process at the school, as noted below.

Finding: Ability-To-Benefit Retesting Requirements Were Not Always Met

Our review revealed that All-State did not always comply with Wonderlic's procedures for administering retests of the WBST. We found that during the period July 1, 1997, through November 12, 2000, 12 students who received \$57,994 in Title IV Student Financial Aid (SFA) funds at All-State were improperly admitted to the institution after passing a WBST that was not conducted in accordance with the publisher's established procedures for retesting.

Section 484 (d) of the HEA states that—

In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any [Title IV program] assistance . . .

(1) The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

According to 34 CFR § 668.151(a)(2), "An institution may use the results of an approved test to determine a student's eligibility to receive Title IV, HEA programs funds if the test was independently administered and properly administered."

The regulations at 34 CFR § 668.151(d)(2) provide that a test is properly administered if the test administrator, among other requirements, "[a]dministers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test"

The *Wonderlic Basic Skills Test User's Manual for Ability-To-Benefit Testing* instructions for conducting retests of the WBST states—

When an applicant has already taken both verbal and quantitative forms 1 & 2 of the WBST, but you believe that he or she has not been accurately assessed, you may retest the applicant again on either form in accordance with the following rules:

1. The applicant must have already taken both forms of the WBST once.
2. The applicant may be retested on the same test form once, and only once.

3. The applicant must not have been told in advance that there would be an opportunity to take the same test form again.
4. The applicant may be retested on the same form only if at least 60 days have passed since he or she was initially tested on that form.

Of the twelve students who passed an improperly administered WBST retest, we found that 1) one student retested more than once on the same WBST form, 2) one student was retested on the same WBST form before 60 days had elapsed since the student's initial test on that form, and 3) ten students were retested on the same WBST form that they were initially administered without testing on the alternate form. Nine of the twelve students who were not appropriately retested by All-State and were improperly admitted to the school successfully completed their courses and graduated.

All-State lacked adequate controls to verify that WBST retests were conducted in accordance with the guidance provided by its publisher. This lack of adequate controls resulted in invalid ATB determinations, improper admission of students, and disbursements of \$57,994 of Title IV, HEA program funds to ineligible students.

Recommendations:

We recommend that the Chief Operating Officer for Student Financial Assistance require All-State to—

1. Repay \$13,543 in Federal Pell Grant funds and \$840 in Federal Supplemental Educational Opportunity Grants to ED, and \$43,611 in Federal Stafford Loan funds to the appropriate lenders, for the grants and loans made to the 12 students who were improperly admitted to All-State after passing a retest of the WBST that was not conducted in accordance with the publisher's procedures.
2. Strengthen its management controls to verify that WBST retests are conducted in accordance with the publisher's procedures.

All-State's Reply:

All-State indicated that it did not concur with our finding and recommendations. All-State believes that our finding is without merit because it is based on a misreading of the applicable law and regulations, particularly as the sources relate to the responsibilities of the test publisher and independent test administrator, rather than the institution, to administer ATB tests. All-State's response states—

In accordance with [34 CFR §§ 668.150, 668.151, and 668.154], the School should not bear any responsibility for any alleged failures because of its sharply limited role in the testing process. Clearly, the principal responsibility for preparing, administering, scoring, and reviewing the quality of the ATB exams

rests squarely with the publisher, in this case Wonderlic, Inc., and the ITA, and therefore they, not the School, should be held accountable for any alleged errors.

* * * * *

[T]he institution may not be held liable for any errors by the publisher or ITA. Such a finding is mandated by the Secretary's strong promise that "[he] will not hold institutions financially responsible if they award Title IV, HEA Program funds to ability-to-benefit students who present evidence that they passed approved tests as long as the institutions did not interfere with the independence of the testing process and were not involved in the testing process." 60 Fed. Reg. at 61836 [Emphasis deleted.]

* * * * *

[Section] 668.154 specifically states that an institution may be found liable in only three situations: (1) when the institution uses a test administrator who is not independent from it; (2) when the institution compromises the testing process; and (3) when the institution is not able to show that a student passed an approved test. Clearly, none of these three factors applies in this case. The School utilized a properly certified and independent ITA. Moreover, there is no suggestion that the School compromised the testing process in any way or failed to maintain records that students passed an approved test.

In its response All-State contends that it had no knowledge of the retesting errors because it did not receive any exception reports listing improper retest administrations from the publisher. All-State also argues that it could not assert any influence over the ATB testing process because to do so would violate the independence of the test publisher and the ITA.

In addition, All-State stated that while it does not concede that the Draft Report's finding is valid, the alleged repayment liability is significantly overstated. All-State explained that the liability listed for the finding should exclude the Title IV funds received by the nine students that graduated because their successful academic performance in and of itself demonstrates their ability to benefit from the institution's training. In addition, All-State believes that the repayment liability for the three students who did not graduate is overstated because the finding did not apply the Department's Actual Loss Formula.

All-State also stated that the 12 students cited in the finding received a total of \$42,591 in Title IV loan funds.

OIG's Response:

We reviewed All-State's comments but our finding remains unchanged. Under 34 CFR § 668.151(a)(2), an ATB test may only be used to determine a student's eligibility for Title IV, HEA funds if the test was "independently administered and properly administered."

In addition, 34 CFR § 668.151(g) requires institutions to maintain records documenting—

- (1) The test taken by the student;
- (2) The date of the test; and
- (3) The student's scores as reported by the test publisher, assessment center, or State.

The "Individual ATB Score Report" that Wonderlic uses to report the results of its ATB test clearly identifies the test forms upon which each score is based. In addition, for 11 of the 12 students in question, the "Individual ATB Score Report" included a notification that "[t]his score report may be used in making Title IV determinations if and only if the test was administered in full compliance with Wonderlic's published ATB testing procedures, including those governing retests."

All-State had, or should have had, adequate information in its student files to determine that the students' tests had not been properly administered. Therefore, All-State was required to determine that the students in question were ineligible to receive Title IV, HEA funds based on those tests. All-State is correct in asserting that it is not responsible for errors in administering the ATB test; however, All-State's error was not an error in the ATB test administration, it was an error in its eligibility determination. Under its program participation agreement, All-State, not the test publisher or the ITA, is responsible for identifying eligible students.

Under 34 CFR § 668.154—

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—

- (a) Used a test administrator who was not independent of the institution at the time the test was given;
- (b) Compromises the testing process in any way; or
- (c) Is unable to document that the student received a passing score on an approved test.

We do not agree with All-State that "[t]here is no suggestion that the School . . . failed to maintain records that students passed an approved test." Since the records that All-State maintains show that the students did not take the approved version of the test that was applicable to their circumstances, the records fail to show that the students passed an approved test. As a result, our position does not conflict with the Secretary's statement quoted by All-State, since the Secretary's statement concerning financial responsibility is limited to students who "present evidence that they passed approved tests."

In addition, we do not agree with All-State's assertion that it is precluded from following our recommendations because to do so would violate the independence of the test publisher and the ITA. Our recommendations would not require All-State to influence the testing process; they would only require All-State to make reasonable determinations of eligibility based on the information available to it.

All-State's response also explained that it believes the asserted liability for the audit finding is overstated because 9 of the 12 students graduated and the Actual Loss Formula was not used for the 3 students that did not graduate. We do not agree that the asserted liability is overstated.

Any monetary liability owed by All-State with respect to this finding will be determined by the appropriate Department officials during the audit resolution process.

Based on All-State's response and documentation, we recalculated the total amount of Federal Stafford Loan funds received by the 12 students and determined that it is \$43,611. We have revised our first recommendation to reflect this amount.¹

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether All-State properly administered its ATB testing process in accordance with the test publisher's procedures, the HEA, and regulations.

To accomplish our objective, we reviewed Wonderlic's data, compared it to data in the National Student Loan Data System, and identified 24 SFA recipients at All-State who, during the period July 1, 1997, through November 12, 2000, either did not receive a passing score on the WBST (12) or were apparently not tested in accordance with Wonderlic's retesting procedures (12). For all 24 SFA recipients, we reviewed the student files at All-State that included admission, academic, financial aid, and fiscal information.

During our review at Wonderlic, we tested the reliability of computerized WBST data by comparing selected data records with the completed WBST answer sheets. We concluded that the computerized information was sufficiently reliable for the purposes of our audit at All-State. We did not rely on any computer data processed by All-State.

We reviewed the terms of compensation for All-State's Independent Test Administrator (ITA) and its accounting records for compensation paid to the ITA. We interviewed All-State's personnel and ITA to obtain an understanding of the ATB testing process at the institution. We also reviewed All-State's SFA audit reports, prepared by McClintock and Associates, Certified Public Accountants, for the years ended October 31, 1998, 1999, and 2000, and a program review report prepared by the Pennsylvania Higher Education Assistance Agency.

We conducted our fieldwork at All-State's campus in Lester, PA, from May 7, 2001, through May 9, 2001. We also conducted fieldwork at Wonderlic, Inc., in Libertyville, IL, from November 13, 2000, through November 17, 2000. Our exit conference was held on May 9, 2001. Our audit was performed in accordance with government auditing standards appropriate to the scope of the audit described above.

STATEMENT ON MANAGEMENT CONTROLS

As part of our review, we assessed All-State's management control structure, as well as its policies, procedures, and practices applicable to the scope of the audit. We did not rely on management controls to determine the extent of our substantive testing.

¹ We have adjusted the amount, and other amounts in this report, to reflect the full amount of the Title IV aid received by students, rather than the amount disbursed.

For the purpose of this report, we assessed and classified the significant controls into the following category:

- Procedures for Administering ATB Tests.

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed a management control weakness that adversely affected All-State's ability to administer ATB tests. This weakness is discussed in the Audit Results section of this report.

ADMINISTRATIVE MATTERS

Statements that management practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determination of corrective action to be taken will be made by the appropriate Department of Education officials.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Department of Education official, who will consider them before taking final Department action on the audit:

Mr. Greg Woods
Chief Operating Officer
Student Financial Assistance
Regional Office Building, Rm. 5132
7th and D Streets, SW
Washington, DC 20202

Office of Management and Budget Circular A-50 directs Federal agencies to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be greatly appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

We appreciate the cooperation given us in the review. Should you have any questions concerning this report please contact me at 215-656-6279.

Sincerely,


Bernard Tadley

Regional Inspector General for Audit

Attachment



October 5, 2001

Mr. Bernard Tadley
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
The Wanamaker Building
100 Penn Square East, Suite 502
Philadelphia, PA 19107

Re: ED-OIG/A03-B0014
OPE ID: 02495500
DHL Airway Bill: 7439127990

TRACTOR
TRAILER
DRIVER
TRAINING

CUSTOMIZED
TRAINING
FOR BUSINESS
AND INDUSTRY

COMPLIANCE
AND SAFETY
TRAINING

AUTHORIZED
PENNSYLVANIA
CDL TEST SITES

Dear Mr. Tadley:

This letter constitutes the reply of All-State Career School ("School") to the above-referenced draft audit report ("Draft Report") prepared by your office and dated August 27, 2001 (attached at Exhibit A). The School appreciates your consideration in our discussions, including the additional time until October 7, 2001 to file this reply.

The Draft Report asserts that the School failed to comply fully with the Ability-To-Benefit ("ATB") testing requirements. Specifically, the Draft Report (page 3) alleges three separate errors with respect to the ATB re-testing of 12 students as follows:

Of the 12 students who passed an improperly administered WBST retest, we found that: 1) one student retested more than once on the same WBST form; 2) one student was retested on the same WBST form before 60 days had elapsed since their initial test on that form; and 3) 10 students were retested on the same WBST form that they were initially administered without testing on the alternate form.

As a result, the Draft Report suggests that the Department of Education's Chief Operating Officer seek the repayment of \$57,204 in Title IV federal student aid funds previously disbursed to those 12 students who were improperly admitted to the School due to these alleged failures.

For the reasons below, the School believes that the findings in the Draft Report are without merit because they are based on a misreading of the applicable law and regulations, particularly as these sources relate to the specific responsibilities of the test publisher and independent test administrator ("ITA"), rather than the institution, to administer ATB tests. Accordingly, the School asks that these findings be dropped in their entirety when your office issues its Final Audit Report.

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Legal Framework

The legal framework for the ATB requirements are set forth in Section 484 (d) of the Higher Education Act of 1965, as amended ("HEA") (20 U.S.C. § 1070 et seq.) and 34 C.F.R. § 668.150-151, 154. Sections 668.150-151 and 154 provide, in pertinent part:

§ 668.150 Agreement between the Secretary and a test publisher.

(a) If the Secretary approves a test under this subpart, the test publisher must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for Title IV, HEA program funds.

(b) The agreement between a test publisher and the Secretary provides that the test publisher shall –

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have –

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Decertify a test administrator for a period that coincides with the period for which the publisher's test is approved if the test publisher finds that the test administrator –

(i) Has repeatedly failed to give its test in accordance with the publisher's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in § 668.151;

(4) Score a test answer sheet that it receives from a test administrator;

● * * * *

§ 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for Title IV, HEA program funds under this subpart, if a student has not passed an approved state test, under § 668.143, an institution must select a certified test administrator to give an approved test.

(2) An institution may use the results of an approved test to determine a student's eligibility to receive Title IV, HEA programs funds if the test was independently administered and properly administered.

(b) The Secretary considers that a test is independently administered if the test is

- . . .

(2) Given by a test administrator who –

(i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;

(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and

(iv) Is not a current or former student of the institution.

(c) The Secretary considers that a test is not independently administered if an institution –

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; . . .

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator –

- (1) Is certified by the test publisher to give the publisher's test;
- (2) Administers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test;

* * * * *

§ 668.154 Institutional Accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution –

- (a) Used a test administrator who was not independent of the institution at the time the test was given;
- (b) Compromises the testing process in any way; or
- (c) Is unable to document that the student received a passing score on an approved test.

(Emphasis added).

The Draft Report's Findings Turn On The Conduct Of The Publisher And ITA, Not The School

In accordance with these legal standards, the School should not bear any responsibility for any alleged failures because of its sharply limited role in the testing process. Clearly, the principal responsibility for preparing, administering, scoring, and reviewing the quality of the ATB exams rests squarely with the publisher, in this case Wonderlic, Inc., and the ITA, and therefore they, not the School, should be held accountable for any alleged errors.

This is entirely consistent with the history and purposes of the ATB regulation. Any suggestions by commentators that institutions should play a more active role in test administration and scoring were rejected decisively by the Secretary when the rules were first promulgated in 1995. The Secretary declared simply that he “strongly disagree[d] with the commentators’ suggestion that an institution should be able to administer and score a test.” 60 Fed. Reg. 61830, 61837 (Dec. 1, 1995). Instead, the Secretary emphasized that “[t]he purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests.” *Id.* at 61836. (Emphasis added). Indeed, the institution has no role in administering ATB exams except to contract with an approved test publisher and a certified test administrator. In this case, the School fulfilled both of those obligations and there is nothing in the Draft Report that even suggests otherwise.

Moreover, after it entered into such contracts, the School did not interfere with the testing administration in any way. At all times the School complied with the specific and demanding standards of section 668.151(b) which requires that the institution remain

completely independent of the testing process. More specifically, Section 668.151(b) provides that an ATB exam is not “independently administered” if the institution “[c]omprises test security or testing procedures” or “[o]therwise interferes with the test administrator’s independence or test administration.” In other words, once the institution contracts with a duly qualified ITA in the proper manner, as the School did here, the institution may not control or even influence the test administration because to do so is to jeopardize the independence of the ITA. Accordingly, the institution may not be held liable for any errors by the publisher or ITA. Such a finding is mandated by the Secretary’s strong promise that “[he] will not hold institutions financially responsible if they award Title IV, HEA Program funds to ability-to-benefit students who present evidence that they passed approved tests as long as the institutions did not interfere with the independence of the testing process and were not involved in the testing process.” 60 Fed. Reg. at 61836 (Emphasis added).

So, too, the regulations themselves require that the School be found not liable for the repayment of the Title IV funds. Section 668.154 specifically states that an institution may be found liable in only three situations: (1) when the institution uses a test administrator who is not independent from it; (2) when the institution compromises the testing process; and (3) when the institution is not able to show that a student passed an approved test. Clearly, none of these three factors applies in this case. The School utilized a properly certified and independent ITA. Moreover, there is no suggestion that the School compromised the testing process in any way or failed to maintain records that students passed an approved test. As a result, there are no grounds on which to find the School liable here. Indeed, in an analogous proceeding, an administrative judge came to this same conclusion when a school’s ITAs, members of another community college, failed to register with the test publisher and send the test results to the publisher. See In re Waukegan School of Hair Design, Dkt. No. 96-66-SP (Aug. 29, 1996). In that case, the judge reasoned that because these failures did not significantly alter the nature of the test or compromise the independence of the administrator, the institution would not be responsible for repaying Title IV funds. So, too, in this case, any alleged failures by the ITA were minimal and did not in any way jeopardize the ITA’s independence. As a result, as in Waukegan, the School must not be required to repay any Title IV funds.

The regulations leave no question that the test publisher and ITA bear fundamental responsibility not only for the testing itself, but also oversight to identify any questions or exceptions in the testing process, pursuant to 34 C.F.R. § 668.150-151 (quoted above). Their role is set out in more detail in the Wonderlic Basic Skills Test User’s Manual for Ability-To-Benefit Testing (“Manual”), as follows:

Official Test Scoring for ATB Determination

U.S. Department of Education regulations require that test scores used for ATB determination be provided by the test publisher. These regulations require that a certified ITA personally submits all ATB answer sheets “within two business days

after test administration” to the Wonderlic Testing Services Department for scoring. All used ATB answer sheets – even those from incomplete test administrations, or those for applicants who perform poorly on the WBST – MUST be sent to Wonderlic. Used answer sheets may be photocopied for school records as a safeguard against forms being lost or destroyed.

ATB answer sheets will be processed within three business days after they are received by Wonderlic. The Wonderlic Testing Services Department will scan each answer sheet and run diagnostic analyses to identify any problems that may have occurred in the test administration. An official *WBST Individual ATB Score Report* will be sent to both the school and the applicant. A description of this report is presented in the “ATB Test Score Interpretation” part of this manual. . . .

* * * * *

Quarterly Reporting

On a quarterly basis, the Wonderlic Testing Services Department will generate an ATB quarterly report which provides a comprehensive record of all quarterly and cumulative WBST testing activity at a particular school. This report is designed to improve the effectiveness of the school’s recruiting and testing program. By examining this report, schools can better understand the skills of their applicant pool and better manage their recruiting process, while ITAs can verify the accuracy of their test administrations. An overview of each section in the report is provided below.

* * * * *

Exception Reports

This section provides specialized exception reports which are included when inconsistent or improper testing activity has been identified. For example, Wonderlic will produce an exception report listing retest administrations that were improperly conducted on the same form. Use this section to identify and correct improper testing procedures.

(pages 35 and 52-53; emphasis added) (copy at Exhibit B).

Most significant, the Manual provides that “Wonderlic will produce an exception report listing re-test administrations that were improperly conducted on the same form.” The propriety or impropriety of such re-tests is precisely the issue posed in the Draft Report. Pursuant to Wonderlic’s own Manual, the obligation to identify re-test errors rests with Wonderlic, not the School, but Wonderlic never sent the School any exception reports for the period covered by the Draft Report. While the School received occasional quarterly reports,

such quarterly reports are not designed to identify the type of errors asserted in the Draft Report. Accordingly, the Draft Report's findings improperly hold the School responsible for obligations that are specifically delegated to the test publisher. The School had no knowledge of such errors because the School did not receive any exception reports.

We emphasize that this is not simply a technical point. The entire predicate of the ATB exam system rests on the independence of the test publisher and ITA, who are separately accountable to the Department for their conduct. An institution such as the School has no control over the ATB testing process. Moreover, the School could be found in violation of the regulations if it attempted to assert any influence because to do so would undermine the independence of the test publisher and ITA. See 34 C.F.R. § 668.154. Hence, the Draft Report is fundamentally flawed and should be withdrawn in its entirety.

Repayment Liability Is Overstated Because 9 Of 12 Students Completed Their Programs

Even if we assume for the sake of argument that the Draft Report's finding is valid, the alleged repayment liability is significantly overstated. As a matter of reason and equity, institutions cannot be subject to repayment liability for an ATB error when the affected students successfully complete their programs. In this case, the Draft Report itself (page 3) notes that 9 of the 12 students in question successfully completed their coursework and graduated. These 9 students are identified in the final nine ledger cards at Exhibit C. Their successful academic performance in and of itself demonstrates their ability to benefit from the institution's training. As a result, no liability for these 9 students is warranted under these circumstances.

The Draft Report asserts that the 12 students received a total of \$14,383 in Pell and SEOG grant funds and \$42,591 in Title IV loan funds.¹ The 9 students who graduated received \$12,537 in grant funds and \$36,765 in loan funds, as demonstrated by their ledger cards. Accordingly, the only funds in question relate to the remaining 3 students (identified at the first three ledger cards at Exhibit C), who received \$1,846 in grant funds and \$5,826 in loan funds, or a total of \$7,672.

Repayment Liability Is Overstated Because Draft Report Fails To Apply Actual Loss Formula To Loan Funds

If the Department were to assert any liability with respect to this finding, which we assume solely for the sake of argument, the liability for FFEL loan funds must be calculated based on the Department's Actual Loss Formula. The Actual Loss Formula is well established in Department practice and case law, based on the simple proportion that the Department does not provide the loan principal of a guaranteed loan and, therefore, an institution cannot be

¹ The Draft Report indicates total loan volume of \$42,821, but pursuant to the attached ledger cards for the affected students the total loan volume was \$42,591.

obligated to repay funds to the Department that the Department did not provide. Rather, the liability of an institution must be calculated to approximate the Department's costs for interest and related subsidies on such loans, as provided under the Actual Loss Formula.

Indeed, the Department's administrative law judges have fully endorsed the use of the Actual Loss Formula, as stated in In re Fisk University, Docket No. 94-216-SP (Init. Decision October 5, 1995):

Numerous additional cases have upheld the usage of the actual loss formula. See In Re Monmouth County Vocational School District, Dkt. No. 94-144-SP, U.S. Dep't of Educ. (April 21, 1995), at 2. See also In re Commercial Training Services, Inc., Dkt. No. 92-128-SP, U.S. Dep't of Educ. (Aug. 4, 1993), at 6-7; In re Southeastern University, Dkt. No. 93-61-SA, U.S. Dep't of Educ. (June 22, 1994), at 2; In re Berk Trade and Business School, Dkt. No. 93-170-SP, U.S. Dep't of Educ. (June 27, 1994), at 4-5; In re Calvinade Beauty Academy, Dkt. No. 93-151-SA, U.S. Dep't of Educ. (March 21, 1995). More recently, this tribunal not only has held that SFAP can use the actual loss formula as a fair and accurate assessment of liability, but also has required its usage even when SFAP opposed its application. In In re Nettleton Junior College, Dkt. No. 93-29-SP, U.S. Dep't of Educ. (June 8, 1994), the school requested that its liability be determined using the actual loss formula. SFAP refused and argued that SFAP could select the method of repayment. The judge held that the school was entitled to have its liability determined according to the actual loss formula and this decision was certified by the Secretary on February 28, 1995. A very recent decision also mandated usage of the actual loss formula to reduce the school's liability. In re Muscular Therapy Institute, Dkt. No. 94-79-SP, U.S. Dep't of Educ. (July 14, 1995), at 5-6. Therefore, in the case before me, I reject SFAP's attempts to characterize the actual loss formula, which SFAP itself developed and which has been applied in other cases, as somehow being unfair to SFAP.

Accordingly, we have applied the Actual Loss Formula to the loans to the 3 students identified in the Draft Audit Report who did not graduate, with a resulting liability of \$1,606. The calculation, along with the cohort default rate notice to establish the School's FY 1999 official cohort default rate, is shown at Exhibit D. As a result, while we do not concede that the School has any liability in this matter, the maximum potential liability for this finding is \$3,452, consisting of the \$1,846 in grant funds and \$1,606 in loan funds as adjusted under the Actual Loss Formula.

The School Has Reviewed Its ATB Procedures

In response to the Draft Report, the School has reviewed its ATB procedures, including its relationship with its test publisher and ITA. We have reminded the publisher and ITA of the urgency of their functions in ATB testing and urged them to fulfill all those functions appropriately and independently. In addition, School staff have closely reviewed the ATB regulations and Wonderlic Manual so they are aware of the minimum time frames and

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similar requirements for re-tests. Accordingly, while the ITA was and still is responsible for administering the tests, the School staff is better informed to consult with them as appropriate.

Thank you for your consideration of this response. If you need any additional information, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph W. Marino". The signature is fluid and cursive, with a large initial "J" and "M".

Joseph W. Marino
President
All-State Career School

Enclosures

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